

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC.APPLICATION NO. 151 OF 2004.

S T A T E,
Through Public Prosecutor,
High Court of Bombay at Panaji,
Goa. ... Applicant.

VERSUS

1. Shri Sushant Gaonkar,
s/o Sukanand Gaonkar,
r/o Kottiwada, Karapur,
Sanquelim, Goa.
2. Shri Sushant Dhawaskar,
s/o Sadanand Dhawaskar,
r/o Dhawaskar Wada,
Sarvan, Karapur,
Sanquelim, Goa. ... Respondents.

Shri S.N. Sardessai, Public Prosecutor for the
Applicant/State.

Shri A.D. Bhobe, Advocate for the Respondents.

CORAM: N.A. BRITTO, J.

DATE: 12TH AUGUST, 2004.

ORAL ORDER:

The State seeks leave to appeal against the acquittal of the respondents (accused, for short) by the learned J.M.F.C., Bicholim by Judgment/Order dated 27.2.2004 in C.C. No. 21/S/2003/B.

2. Both the accused were apparently arrested on suspicion on 13.2.2003 at about 22.15 hrs. The complaint of theft of two metallic poles belonging to BSNL came to be lodged only on 15.2.2003 and after

charge-sheet was filed under Section 379 r/w Section 34 I.P.C., both the accused came to be tried for the said offences and ultimately acquitted.

3. In the trial of the accused, prosecution appears to have examined seven witnesses. A.1 Sushant Gaonkar was sought to be connected to the said theft by a recovery panchanama in support of which two witnesses were examined namely P.W.3 Laxman and P.W.4 Shridar. As far as Accused No.2 Sushant Dhawaskar is concerned, it appears that nothing was recovered at his instance and this position is conceded by Shri Sardessai, the learned P.P. as well as Shri Bhobe, the learned counsel for the accused.

4. Shri Bhobe has placed reliance on the case of **State of Rajasthan v. Raja Ram** [(2003) 8 S.C.C. 180] in support of his submission that an order of acquittal should not be generally interfered with because the presumption of innocence of the accused is further strengthened by his acquittal.

5. Both the said witnesses namely P.W.3 Laxman and P.W.4 Shridar who were examined to support the said recovery against A.1 Sushant not only belonged to the said BSNL but also were declared hostile and cross-examined by the prosecution. The judgment of the

learned J.M.F.C. which otherwise does not consider the evidence of the prosecution in all its details, shows that the learned J.M.F.C. was not prepared to accept the evidence of the said witnesses, but also because the said witnesses had failed to identify the property which was allegedly recovered at the instance of A.1 Sushant. P.W.1 Jadav who was J.T.O. of the said BSNL and who had lodged the F.I.R. on 15.2.2003 had stated that the stolen poles could have been identified on the marks/soul plates which were on the said poles, but certainly it was not the case of the prosecution that any of those marks were seen on the pieces which were attached by the Police by virtue of the said panchanama of recovery. The view arrived at by the learned J.M.F.C. in acquitting the accused cannot be termed to be perverse in the context of the entire case of the prosecution. Being so, this would not be a fit case to grant leave to the State to appeal against the said Judgment.

6. Application for leave to appeal is therefore hereby rejected.

N.A. BRITTO, J.

sl.